IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8787 of 2002
With
SPECIAL CIVIL APPLICATION No. 13840 of 1993
With
CIVIL APPLICATION No. 10873 of 2005
In SPECIAL CIVIL APPLICATION No. 8787 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANSUKHLAL PREMJI POPAT - Petitioner(s)

Versus

COLLECTOR, RAJKOT - Respondent(s)

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Appearance :
MR NIRAV C THAKKAR for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

Date : 16/11/2005

COMMON **ORAL JUDGMENT**

1. The petitioner in this petition under Article 226 of the Constitution of India, has challenged the order dated

9/17.7.2002, Annexure-A, passed by the District Collector, Rajkot. It is the case of the petitioner that on 1.12.1990 he was granted land bearing survey no. 120, admeasuring 3 Acres, situated in the village site of Vajdi-Virdi, Taluka & District Rajkot for growing flower trees for 15 years. Necessary entry was made in the revenue record with regard to the land granted to the petitioner on 5.12.1990. It is the case of the petitioner that he has grown flower trees in anticipation of grant of lease of land in question. It is further the case of the petitioner that after lapse of 9 months of petitioner having got the land, show-cause notice dated 13.9.1991 came to be issued against him to show cause why the flower trees were grown in anticipation of lease of land in question being granted to him pursuant to his application during the interregnum period that is the period between the date of his application and the date of order granting lease to him was passed. It appears that the petitioner has challenged the order dated 14.10.1992 by filing the petition being SCA No. 7781 of 1992. This Court (Coram: M.S. Parikh, J.) by his order dated 16.7.1992 passed the following order:

“The impugned judgment and order cancelling the

earlier order dated 1.12.1990 whereby the grant of lease for growing flower trees was recommended, is hereby quashed and set aside and the matter is now remanded to the Collector, District Rajkot for passing an appropriate order after hearing the petitioner to regularise the activity of growing trees during the period prior to 1.12.1990, in accordance with law bearing in mind the third paragraph of section 61 of the Code and bearing in mind the observations made hereinabove.

It is made clear that if some other land is encroached upon by the petitioner or any breach of the terms and conditions of the grant of lease is committed by the petitioner, it would be open to the learned Collector to take appropriate action in accordance with law in that respect.

Rule is made absolute accordingly with no order as to costs."

2. In pursuance to the said order, the respondent – Collector passed an order dated 17.7.2002, which is impugned in this petition.

3. It may be stated that the respondent also issued

show cause notice dated 24.11.1993 to show cause as to why the entry no. 3161 entered in the revenue record dated 5.12.1990 be not canceled. The petitioner challenged the said show-cause notice by filing a petition being SCA No. 13840 of 1993. In SCA No. 13840/1993, on 14.12.1993, this court issued notice to the respondent and granted ad interim relief staying further proceedings pursuance to the notice Annexure-E by directing the respondents to maintain status-quo as regards land granted to the petitioner. On 8.3.1994, this Court (Coram: YB Bhatt, J.) issued Rule in the petition and clarified that the proceedings in pursuant of the show-cause notice at Annexure-E are not stayed and the hearing thereon shall be completed as expeditiously as possible. It is further clarified that any order that may be passed in consequence of the hearing shall not be implemented or operated upon without further orders of this court. As the subject matter in both the petitions are same and inter linked, they are heard and disposed of by this common judgment.

4. I have heard Mr. NC Thakkar ld. advocate appearing for the petitioner and Mr. KL Pandya ld. AGP for the respondent. I have gone through the averments made in the petition as well as reply affidavit file by the

respondent. Ld. Advocate for the petitioner submits that the impugned order passed by the respondent is illegal, arbitrary and beyond the scope of the reasoned order passed by this court inasmuch as it is not open to the respondent to pass the order for taking possession of the land as he has only to consider of imposing of fine for growing flower trees before the date of delivery of possession of the land. On the other hand, ld. AGP supported the order passed by the respondent. Having gone through the judgment and order passed by My Ld. Brother M.S. Parikh, J., it is clear beyond any manner of doubt that he has remanded the matter back to respondent for passing appropriate order to regularise the activity of growing flower trees during the period prior to 1.12.1990 in accordance with law bearing in mind the third paragraph of sec. 61 of the code and also to bear in mind the observations made in the judgment. The respondent in the instant case, was thus, required to consider the question of regularisation of the activity of growing trees during the period prior to 1.12.1990. Instead of considering the said direction, the respondent has taken into consideration other factors namely that distance between the limits of Municipal Corporation and RUDA and the land allotted to the petitioner is less then the

permissible limits and, therefore, the regularisation is not permissible. It does not transpire from the impugned order that the respondent has considered the question to regularise the activity of growing tree nor it is clear that respondent has taken into consideration the direction to bear in mind the third paragraph of sec. 61 of BLR Code and the observations made in the judgment. It is, therefore, clear that the impugned order is beyond the scope of remand order passed by this Court. Mr. Thakkar ld. advocate appearing for the petitioner has frankly stated that as the petitioner has grown tree in anticipation of allotment of land, he is interested only to have regularisation of the interregnum period. In fact, that was the very argument advanced before My Ld. Brother M.S. Parikh, J. in the earlier petition. After considering the argument, My Ld. Brother M.S. Parikh J. quashed and set aside the order passed by the respondent and gave clear direction to regularise the activity of growing the trees during the period prior to 1.12.1990 in accordance with law bearing in mind third paragraph of sec. 61 of the Code. As the respondent failed to carry out the said direction, this petition is required to be allowed.

5. In the result, this petition is allowed. The

impugned order Annexure-A dated 1.12.1990 passed by the respondent is quashed and set aside. The respondent is directed to pass appropriate order to regularise the activity of growing trees for the period prior to 1.12.1990 in accordance with law bearing in mind the third paragraph of sec. 61 of the Code before the expiry of the lease period.

6. It is, however, made clear that this order would not come in the way of respondent to take appropriate decision as to continue and/or to discontinue the extension of lease which expires on 30.11.2005 in favour of the petitioner. Needless to say that the same will be decided in accordance with law preferably on or before the period of lease expires.

7. In view of what is discussed above, the respondent shall take appropriate decision in the proceedings initiated pursuant to the show-cause notice Annexure-E dated 24.11.1993 in accordance with law. Rule is made absolute to the aforesaid extent in both the petitions with no order as to cost.

In view of above, no order on CA NO.10873 of 2005.

(KSHITIJ R. VYAS, J.)

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